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2 Plea

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 14 Cr. 0404 (JMF)

6 BRENDAN JOHNSTON,

7 Defendant.
8 -----x9 November 21, 2014
10 10:08 a.m.

11 Before:

12 HON. JESSE M. FURMAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

18 BY: SARAH Y. LAI

19 Assistant United States Attorney

20 MICHAEL ZWEIBACK

21 Attorney for Defendant

22 - also present -

23 SA Patrick Hoffman, FBI

24

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1 THE CLERK: United States v. Brendan Johnston, 14 Cr.
2 404. Counsel, please state your names for the record.

3 MS. LAI: Sara Lai for the government. Good morning,
4 your Honor. With me at counsel table is Special Agent Patrick
5 Hoffman.

6 THE COURT: Good morning to both of you.

7 MR. ZWEIBACK: Good morning, your Honor. Mike
8 Zweiback on behalf of the defendant, Brendan Johnson, who is on
9 bond and presently before the Court.

10 THE COURT: Good morning to both of you.

11 You may be seated.

12 I have been advised, Mr. Johnston, that you wish to
13 change your plea and enter a plea of guilty to Count One of the
14 Information, 14 Crim. 404; is that correct?

15 THE DEFENDANT: That is correct.

16 THE COURT: All right. Before I accept your guilty
17 plea, I need to ask you certain questions to establish to my
18 satisfaction that you are pleading guilty because you are in
19 fact guilty and not for some other reason, to ensure that you
20 understand the rights that you would be giving up by pleading
21 guilty, and to ensure that you understand the potential
22 consequences of a guilty plea.

23 It is essential that you understand each of my
24 questions before you answer them. So if you don't, I want you
25 to let me know and either Mr. Zweiback or I will clarify it for

Ebldjohp

Plea

1 you. And if at any point you would like to speak with
2 Mr. Szeiback, just let me know that and I'm happy to give you
3 however much time you need to speak with him.

4 Understood?

5 THE DEFENDANT: Understood.

6 THE COURT: All right. Why don't you just move the
7 microphone a little closer to you so that you are speaking
8 directly into it.

9 Before we proceed any further, I will ask my deputy,
10 Ms. Barnes, to administer the oath to Mr. Johnston.

11 THE CLERK: Please rise and raise your right hand.

12 (The defendant was sworn)

13 THE COURT: You may be seated.

14 You are now under oath, Mr. Johnston, which means that
15 if you answer any of my questions falsely, you may be subject
16 to prosecution for the separate crime of perjury. Do you
17 understand that?

18 THE DEFENDANT: I understand that.

19 THE COURT: What is your full name?

20 THE DEFENDANT: Brendan McKenzie Johnston.

21 THE COURT: How old are you?

22 THE DEFENDANT: I'm 24.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: I'm currently enrolled in college.

25 THE COURT: And have you ever been treated or

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Plea

1 hospitalized for any mental illness?

2 THE DEFENDANT: I'm currently being treated for
3 depression. I don't know if that qualifies for that.

4 THE COURT: Better to tell me than not. Is there
5 anything about either your depression or your treatment that
6 would interfere with your ability to understand what is going
7 on here today?

8 THE DEFENDANT: No, it would not.

9 THE COURT: Have you ever been treated or hospitalized
10 for any type of addiction, including drug or alcohol addiction?

11 THE DEFENDANT: No, I have not.

12 THE COURT: In the last 48 hours, have you taken any
13 drugs, medicine or pills or drunk any alcohol?

14 THE DEFENDANT: I have taken my medication that I take
15 daily.

16 THE COURT: What medication is that?

17 THE DEFENDANT: It is a Paxil, 40 milligrams.

18 THE COURT: And is there anything about that
19 medication that will interfere with your ability to understand
20 what's happening here today?

21 THE DEFENDANT: No.

22 THE COURT: All right. Is your mind clear today?

23 THE DEFENDANT: Yes?

24 THE COURT: Do you understand what's happening here
25 today?

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Plea

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Counsel, have you discussed this matter
3 with Mr. Johnston?

4 MR. ZWEIBACK: I have, your Honor.

5 THE COURT: And does he understand the rights that he
6 would be giving up by entering a guilty plea?

7 MR. ZWEIBACK: He does, your Honor.

8 THE COURT: And in your judgment is he capable of
9 understanding the nature of these proceedings?

10 MR. ZWEIBACK: Yes, your Honor.

11 THE COURT: Does either counsel have any doubt as to
12 the defendant's competence to plead guilty at this time?

13 MS. LAI: No, your Honor.

14 MR. ZWEIBACK: None, your Honor.

15 THE COURT: On the basis of Mr. Johnston's responses
16 to my questions, my observations of his demeanor here in court
17 and the representations of counsel, I find that he is fully
18 competent to enter an informed plea of guilty at this time.19 Mr. Johnston, have you received a copy of the
20 Information containing the charges against you?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Have you read it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And have you had enough time to discuss
25 the charges with your lawyer and any possible defenses to those

Ebldjohp

Plea

1 charges?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: And has your lawyer explained to you the
4 consequences of entering a guilty plea?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you satisfied with your lawyer's
7 representation of you?

8 THE DEFENDANT: I am.

9 THE COURT: All right. Now, hang on one moment.

10 (Pause)

11 All right. Ordinarily I have the defendant execute a
12 Waiver of Rights Form. Mr. Szeiback, did your client do that
13 or no? It looks like no.

14 MR. ZWEIBACK: No, he has not, your Honor.

15 THE COURT: All right. Let's proceed nonetheless
16 since it is really belts-and-suspenders and not necessary for
17 Rule 11 purposes.18 Mr. Johnston, I am going to explain to you certain
19 rights that you have. These are rights that you would be
20 giving up by entering a guilty plea. I want you to listen
21 carefully, and if there is anything that you do not understand,
22 stop me and either Mr. Szeiback or I will explain the matter
23 more fully.24 Under the Constitution and laws of the United States,
25 you have the right to plead not guilty to the charges in the

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Plea

1 Information. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: If you did plead not guilty, you would be
4 entitled to a speedy and a public trial by a jury on the
5 charges in the Information. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: At a trial you would be presumed to be
8 innocent and you would not have to prove that you were
9 innocent. Instead, the government would be required to prove
10 your guilt by competent evidence beyond a reasonable doubt
11 before the jury could find you guilty. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: In order to find you guilty, a jury of
14 twelve people would have to agree unanimously that you were
15 guilty. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: At that trial and at every stage of your
18 case, you would be entitled to be represented by a lawyer, and
19 if you could not afford a lawyer, one would be appointed at
20 public expense, free of cost to represent you. Do you
21 understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: During a trial the witnesses for the
24 government would have to come to court and testify in your
25 presence. Your lawyer could cross-examine those witnesses and

Ebldjohp

Plea

1 object to any evidence offered against you by the government
2 and offer evidence on your own behalf, if you so desired. You
3 would also have the right to have subpoenas issued or other
4 process used to compel witnesses to come to court and testify
5 in your defense.

6 Do you understand all of that?

7 THE DEFENDANT: Yes.

8 THE COURT: At a trial, although you would have the
9 right to testify if you chose to do so, you would also have the
10 right not to testify, and if you chose not to testify, then no
11 one, including a jury, could draw any inference or suggestion
12 of guilt from the fact that you did not testify. Do you
13 understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Before trial, you would have an
16 opportunity to seek suppression, or exclusion, of any evidence
17 that the government would offer against you at trial. Do you
18 understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: If you were convicted at a trial, you
21 would have the right to appeal that verdict. Do you understand
22 that?

23 THE DEFENDANT: Yes.

24 THE COURT: If you plead guilty you will also have to
25 give up your right not to incriminate yourself because I may

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Plea

1 ask you questions about what you did in order to satisfy myself
2 that you are guilty as charged, and you will have to admit and
3 acknowledge your guilt. Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: If you plead guilty and if I accept your
6 plea, you will give up your right to a trial and the other
7 rights that we have just discussed, other than your right to a
8 lawyer which you keep whether or not you plead guilty, but
9 there will be no trial, and I will enter a judgment of guilty
10 and sentence you on the basis of your plea after I have
11 considered a presentence report prepared by the United States
12 Probation Department and any submissions that I get from the
13 lawyers. There will be no appeal with respect to whether you
14 did or did not commit the offense to which you are pleading
15 guilty or with respect to whether the government could or could
16 not use the evidence that it has against you.

17 Do you understand all of that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Even now as you are entering this plea,
20 you have the right to change your mind, to plead not guilty,
21 and to go to trial on the charges in the Information. Do you
22 understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand each and every one of
25 the rights that I have just explained to you?

Ebldjohp

Plea

1 THE DEFENDANT: I do.

2 THE COURT: And are you willing to give up your right
3 to a trial and the other rights that we have just discussed?

4 THE DEFENDANT: I am.

5 THE COURT: Do you understand that you are charged in
6 Count One of the Information with participating in a conspiracy
7 to commit computer hacking, in violation of Title 18, United
8 States Code, Section 1030(b)? Do you understand that that is
9 the charge?

10 THE DEFENDANT: Yes.

11 THE COURT: Ms. Lai, would you please state the
12 elements of that offense.

13 MS. LAI: Yes, your Honor.

14 If the case were to proceed to trial, the government
15 would have to prove the following elements beyond a reasonable
16 doubt: First, that there was an agreement between at least two
17 people to violate the laws of the United States, in this case
18 the law against computer hacking; and, two, that the defendant
19 joined that agreement knowingly and willfully, meaning that he
20 understood the goal of the agreement and he joined it with the
21 intent to further that goal.22 In this case, the law against computer hacking, and
23 specifically Section 1030(a)(5)(A), includes the following
24 elements: First, that the defendant or a co-conspirator
25 knowingly caused the transmission of a program, information,

Ebldjohp

Plea

1 code, or command; second, that that transmission would
2 intentionally cause damage to a protected computer without
3 authorization -- a protected computer is defined as one that is
4 used in or affects interstate commerce or communications, so
5 essentially any computer connected to the Internet -- and,
6 third, to prove a felony as charged in this case, the
7 government would have to prove that there was an aggregate loss
8 of \$5,000 during a one-year period or damages affecting ten or
9 more protected computers during a one-year period.

10 THE COURT: Thank you. I'm not sure it matters, but
11 is there an overt act requirement for purposes of the
12 conspiracy charged here?

13 MS. LAI: That is a good question. We would be able
14 to prove one if there is, your Honor.

15 THE COURT: All right. Mr. Johnston, do you
16 understand that if you were to go to trial, the government
17 would have to prove each of the elements that Ms. Lai mentioned
18 and perhaps, as well, that there was an overt act committed in
19 furtherance of the conspiracy beyond a reasonable doubt before
20 the jury could find you guilty? Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Let me tell you now about the
23 maximum possible penalties for the crime to which you are
24 pleading guilty. By "maximum" I mean the most that could
25 possibly be imposed upon you. That doesn't necessarily mean

1 Ebldjohp

2 Plea

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4 that that is the sentence you will receive. But you have to
5 understand that by pleading guilty you are exposing yourself to
6 a combination of punishments up to the maximum that I'm about
7 to tell you. Do you understand that?8
9 THE DEFENDANT: Yes.10
11 THE COURT: First let me tell you about the possible
12 restrictions on your liberty. The maximum term of imprisonment
13 for this crime is 10 years, which could be followed by up to
14 three years of supervised release. "Supervised release" means
15 that you would be subject to supervision by the Probation
16 Department. There would be rules of supervised release that
17 you would be required to follow, and if you violated any of
18 those rules you could be returned to prison to serve additional
19 time without a jury trial and without credit for the time that
20 you spent on your underlying sentence or credit for time spent
21 on post-release supervision.22
23 Do you understand that?24
25 THE DEFENDANT: Yes, I do.26
27 THE COURT: You should understand that there is no
28 parole in the federal system and that if you were sentenced to
29 prison you would not be released early on parole. There is a
30 limited opportunity to earn credit for good behavior, but if
31 you were sentenced to prison, you would have to serve at least
32 85 percent of the time to which you were subpoenaed.33
34 Do you understand that?

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Plea

1 THE DEFENDANT: Yes.

2 THE COURT: In addition to those potential
3 restrictions on your liberty, there are certain financial
4 penalties involved in the maximum possible punishment. The
5 maximum allowable fine is the greatest of \$250,000, twice the
6 gross pecuniary, or financial gain, derived from the offense or
7 twice the gross pecuniary loss to someone other than you as a
8 result of the offense; second, I can order restitution to any
9 person or entity injured as a result of your criminal conduct.10 Ms. Lai, is there any restitution at issue here, and,
11 if so, does the government have a calculation of it at the
12 moment?13 MS. LAI: We don't have a calculation at this point.
14 We will submit it before sentencing.15 THE COURT: All right. Third, I can order you to
16 forfeit all property derived from the offense or used to
17 facilitate the offense, and finally, I must order a mandatory
18 special assessment of \$100.19 Do you understand, those are the maximum possible
20 penalties?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you a citizen of the United States,
23 Mr. Johnston?

24 THE DEFENDANT: Yes, I am.

25 THE COURT: Do you understand that as a result of your

Ebldjohp

Plea

1 guilty plea, there may be adverse effects on your
2 immigration -- forgive me. You said "yes" and I was not
3 listening carefully enough. Ignore that.

4 Do you understand that as a result of your guilty
5 plea, you may lose certain valuable civil rights, to the extent
6 that you have them or could otherwise obtain them now, such as
7 the right to vote, the right to hold public office, the right
8 to serve on a jury, and the right to possess any kind of
9 firearm?

10 THE DEFENDANT: Yes.

11 THE COURT: Are you serving any other sentence, either
12 state or federal, or being prosecuted in any other court at
13 this time?

14 THE DEFENDANT: No.

15 THE COURT: Do you understand that if your lawyer or
16 anyone else has attempted to predict for you what your sentence
17 will be, that their predictions could be wrong?

18 THE DEFENDANT: Yes.

19 THE COURT: It is important for you to understand that
20 no one -- not your lawyer, not the government's lawyer -- no
21 one can give you any assurance or promise as to what your
22 sentence will be in this case, and that is because your
23 sentence will be determined by me and by me alone. And I'm not
24 going to do that today. Instead, I will wait until I get the
25 presentence report, prepared by the United States Probation

1 Ebldjohp

2 Plea

3 Department that I mentioned earlier. I will do my own
4 independent calculation of the United States Sentencing
5 Guidelines and how they apply to your case. I will consider
6 any potential departures from the guidelines' range as well as
7 any submissions I receive from the lawyers and factors set
8 forth in a statute that governs sentencing, Title 18, United
9 States Code, Section 3553(a).

10 I'll do all of that before determining and imposing an
11 appropriate sentence on you. Do you understand all of that?

12 THE DEFENDANT: Yes.

13 THE COURT: And have you discussed that process with
14 your lawyer?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Even if your sentence is different from
17 what your lawyer or anyone else has told you that it might be,
18 even if it is different from what you expect or hope it to be
19 you, and even if it is different from what may be in the plea
20 agreement with the government that we will talk about in a
21 moment, you will still be bound by your guilty plea and you
22 will not be allowed to withdraw your plea of guilty. Do you
23 understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Now, I understand that there is a written
plea agreement that you and your lawyer have entered into with
the lawyer for the government. Is that correct?

Ebldjohp

Plea

1 THE DEFENDANT: That is correct.

2 THE COURT: I have the letter plea agreement here,
3 dated September 19, 2014, from Assistant United States
4 Attorneys Daniel Noble and Sara Lai, addressed to Mr. Szeiback.
5 I will mark this as Court Exhibit 1 and provide it to the
6 government to retain in its possession after this proceeding.

7 Turning to the last page, which I am showing you now,
8 it appears that you have signed the plea agreement and dated it
9 today, November 21, 2014. Is that your signature there on the
10 last page?

11 THE DEFENDANT: Yes, it is.

12 THE COURT: Did you read the plea agreement before you
13 signed it?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: And did you sign it in the presence of
16 Mr. Szeiback?

17 THE DEFENDANT: Yes.

18 THE COURT: And did you discuss it with Mr. Szeiback
19 before you signed it?

20 THE DEFENDANT: Yes.

21 THE COURT: Did he explain it to you and answer
22 whatever questions you may have had about the plea agreement
23 before you signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you fully understand it before you

Ebldjohp

Plea

1 signed it?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, one of the features of this agreement
4 is that you agree and do admit to the forfeiture allegation
5 with respect to Count One of the Information, and agree to
6 forfeit to the United States certain property referenced in the
7 plea agreement, is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: And you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, another feature of your agreement is
12 that you and the government have agreed on how the United
13 States Sentencing Guidelines apply to this case, is that
14 correct?

15 THE DEFENDANT: Yes.

16 THE COURT: You should understand that that agreement
17 is binding on you and it is binding on the government but it is
18 not binding on me. I have my own independent obligation to
19 determine the correct guidelines' range. I'm not suggesting to
20 you that I will come up with a different calculation than the
21 one to which you and the government have agreed, but it's
22 possible that I could. And even if I do and even if the range
23 that I calculate is higher than the range set forth in your
24 agreement, you would still be bound by your guilty plea and you
25 would not be allowed to withdraw your plea.

Ebldjohp

Plea

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Another feature of your agreement is that
4 you have agreed to give up, or waive, your right to appeal or
5 otherwise challenge any sentence that is within or below the
6 stipulated Sentencing Guidelines' range of 46 to 57 months'
7 imprisonment. That means that if I sentence you to 57 months
8 in prison or anything less than 57 months in prison, you would
9 not have any right to appeal or otherwise challenge that
10 sentence. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Does this written plea agreement
13 constitute your complete and total understanding of the entire
14 agreement between you and the government?

15 THE DEFENDANT: Yes, it does.

16 THE COURT: Has anything been left out of the written
17 plea agreement?

18 THE DEFENDANT: No, it has not.

19 THE COURT: Other than what is written in the
20 agreement, has anyone made any promise to you or offered you
21 any inducements either to plead guilty or to sign the
22 agreement?

23 THE DEFENDANT: No.

24 THE COURT: And has anyone threatened you or forced
25 you to plead guilty or to sign the agreement?

Ebldjohp

Plea

1 THE DEFENDANT: No.

2 THE COURT: Has anyone made a promise to you as to
3 what your sentence will be in this case?

4 THE DEFENDANT: No.

5 THE COURT: OK. Mr. Johnston, I would like you now to
6 tell me in your own words what you did that makes you believe
7 that you are guilty of the charge in Count One of the
8 Information.9 THE DEFENDANT: In about August 2011, a person who
10 used the online name of Marjinz offered me a job at his company
11 called Blackshades. Blackshades was an Internet business that
12 sold various computer tools, including a product called a
13 remote access tool. I knew that remote access tools were used
14 by network administrators to control computers on their
15 network. They were also used by parents to control and monitor
16 computers used by their children.17 My work for Blackshades involved sales and customer
18 support. My sales activity mainly consisted of posting
19 information on Blackshades on different websites. Customer
20 support consisted of responding to customer inquiries on the
21 Blackshades' website and setting up Blackshades account for new
22 customers.23 Initially, Marjinz paid me \$500 a month. Later
24 Marjinz allowed me to keep some of the proceeds of the products
25 that I sold directly through Internet forums while Marjinz kept

Ebldjohp

Plea

1 the proceeds of sales processed through the Blackshades'
2 website. I never had access to the customer account
3 information stored on the Blackshades servers.

4 On about October 20, 2011, I activated a Blackshades'
5 account for a new customer and transmitted that information to
6 the new customer by electronic message.

7 After I started working for Blackshades I learned
8 through online posts that some of Blackshades' customers were
9 using their remote access tool and other Blackshades' products
10 for illicit purposes. For instance, some people would install
11 a Blackshades' remote access tool onto computers without
12 knowledge or consent of the computer owner. Once installed,
13 the Blackshades user could use the tool to remotely control the
14 other person's computer.

15 I also learned that Marjinz had caused the
16 Blackshades' remote access tool to be programmed so Marjinz can
17 control all of the computers onto which Blackshades' customers
18 had installed it. Marjinz also had access to recover passwords
19 and other information in all customer accounts on the
20 Blackshades' server.

21 After learning how Marjinz was using the Blackshades'
22 products, I continued working for Blackshades and posting and
23 selling the product Blackshades for about 45 days. I worked
24 for Blackshades until about September 2012.

25 I understand and agree that during my involvement with

Ebldjohp

Plea

1 Blackshades, Blackshades' customers used the remote access tool
2 to infect more than 10 computers. I also understand that the
3 website in which I posted information about Blackshades was
4 accessible in the Southern District of New York.

5 THE COURT: All right. Let me ask you just a couple
6 of questions.

7 First of all, I take it you understood that the 10 or
8 more computers that you reference, that the installation, if
9 you will, of Blackshades on those computers was not authorized,
10 in other words, it was done without the permission or knowledge
11 of the people who owned or controlled those computers, is that
12 correct?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. And when you did these things,
15 or at least at some point along the way and you continued to do
16 these things, you understood what was going on? You understood
17 that this involved the installation of malware, if you will, on
18 others' computers without authorization, is that correct?

19 THE DEFENDANT: Yes.

20 THE COURT: And you participated in the sense that you
21 did things in furtherance of that notwithstanding that
22 knowledge, is that correct?

23 THE DEFENDANT: Yes.

24 THE COURT: And agreed to do those things voluntarily?

25 THE DEFENDANT: Yes.

Ebldjohp

Plea

1 THE COURT: All right. And when you did those
2 things -- again, I recognize it sounds like at the beginning of
3 this process you didn't necessarily understand the full scope
4 of everything, but at some point when you did gain that
5 knowledge and did the things that you described, did you know
6 that what you were doing was wrong and against the law?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Mr. Szeiback, do you know of
9 any valid defense that would prevail at trial or of any reason
10 why Mr. Johnston should not be permitted to plead guilty?

11 MR. ZWEIBACK: No, your Honor.

12 THE COURT: Ms. Lai, are there any additional
13 questions that you would like me to ask of Mr. Johnston?

14 MS. LAI: No, your Honor. Thank you.

15 THE COURT: And would you please summarize what the
16 government's evidence would be if the defendant were to go to
17 trial.

18 MS. LAI: Yes, your Honor.

19 If the case were to go to trial, the evidence that the
20 government would present would include the following: Evidence
21 from emails --

22 THE COURT: Could you just speak into the microphone
23 as well, please?

24 MS. LAI: The government's evidence -- is that better?

25 THE COURT: I'm not sure your microphone is working,

Ebldjohp

Plea

1 but go ahead and just speak up.

2 MS. LAI: The government's evidence would include
3 evidence seized from email accounts pursuant to search warrants
4 as well as instant messages. Those emails and instant
5 messages, includes ones with the defendant, in which he and
6 customers discussed -- he, customers, and Marjinz discussed the
7 Blackshades' products and the remote access tool.

8 The government's evidence would also include data
9 seized from a computer which hosted the Blackshades' website
10 that contained a copy of the Blackshades' -- copies of the
11 Blackshades products. It would also include a copy of the
12 remote access tool, which was actually downloaded by an
13 undercover agent in the Southern District of New York, in
14 Manhattan.

15 There would also be electronic payment records showing
16 that Marjinz paid this defendant for his work with the
17 Blackshades organization, and, also, there would be postings
18 downloaded from online forums in which this defendant
19 advertised the Blackshades' product, and the remote access tool
20 in particular, and described what it is capable of doing.

21 So those are some of the things, as well as cooperator
22 testimony, your Honor.

23 THE COURT: All right. Do both counsel agree that
24 there is a sufficient factual basis for a guilty plea to Count
25 One?

Ebldjohp

Plea

1 MR. ZWEIBACK: I do, your Honor.

2 THE COURT: Ms. Lai?

3 MS. LAI: Yes.

4 THE COURT: And does either counsel know of any reason
5 that I should not accept the defendant's plea of guilty?

6 MS. LAI: No, your Honor.

7 MR. ZWEIBACK: No, your Honor.

8 THE COURT: OK. Mr. Johnston, because you acknowledge
9 that you are in fact guilty as charged in Count One of the
10 Information, because I am satisfied that you know of your
11 rights, including your right to go to trial, that you
12 understand the potential consequences of a guilty plea,
13 including the sentence that could be imposed upon you, and
14 because I find that you are knowingly and voluntarily pleading
15 guilty, I accept your guilty plea, and enter a judgment of
16 guilty on Count One of the Information.

17 The Probation Department will want to interview you in
18 connection with the presentence report that it will prepare.
19 If you choose to speak with the Probation Department, it is
20 essential that anything you say is truthful and accurate.
21 Among other things, that report is important to me in deciding
22 what sentence to impose upon you.

23 Before sentencing, you and Mr. Szeiback will have an
24 opportunity to review the report. I would urge you to review
25 it with care, and if there are any mistakes in the report or

Ebldjohp

Plea

1 anything that you wish to bring to my attention in connection
2 with sentencing, share that with Mr. Szeiback so that you can
3 do so in the proper manner. Understood?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, Mr. Szeiback, do you wish to be
6 present for any interview in connection with that report?

7 MR. ZWEIBACK: I do, your Honor.

8 THE COURT: I will order that no interview take place
9 unless counsel is present.

10 Sentencing will be set for March 3, 2015, at 3:30 in
11 the afternoon, and I have a feeling that you have a request.
12 Yes, sir.

13 MR. ZWEIBACK: I do, your Honor.

14 Mr. Johnston is in school. He successfully completed
15 this semester of college. He is registering for next semester.
16 That semester will be done at the beginning of May. I would
17 like to request that the sentencing be put off until the end of
18 May so that he cannot only complete his full semester but we
19 are also in the process of obtaining some medical records that
20 will be relevant to the sentencing.

21 THE COURT: All right. Any objection, Ms. Lai?

22 MS. LAI: No, your Honor.

23 THE COURT: All right. I will put it on, then, for
24 Wednesday, May 27th, at 3:30 in the afternoon.

25 In light of the amount of time between now and then, I

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2 Plea

3 very much do not want to adjourn the sentencing. So you should
4 not anticipate adjournments and should plan accordingly.5 I direct the government to provide to the Probation
6 Department its factual statement of the offense within seven
7 days.8 Defense counsel must arrange for the defendant to be
9 interviewed by the Probation Department in I'll say the next
10 three weeks in light of the holiday that is coming up.11 Pursuant to my individual rules and practices, defense
12 submissions with regard to sentencing are due two weeks prior
13 to sentencing. The government's submission is due one week
14 prior to sentencing. If either side does not intend to make a
15 substantive sentencing submission, it should file a letter on
16 ECF to that effect. And you should consult my rules if there
17 is any request to file anything under seal or in redacted form,
18 including but not limited to any medical records, for example.19 Ms. Lai, any objection to the defendant's current bail
20 conditions being continued through the date of sentencing?

21 MS. LAI: No, your Honor.

22 THE COURT: All right. Mr. Johnston, you should
23 understand that the conditions upon which you have been
24 released up 'til now will continue to apply until the date of
25 sentencing. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You should also understand that any

Ebldjohp

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1 violation of those conditions could have very serious
2 consequences for you at the time of sentencing. Do you
3 understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Finally, you should understand that you
6 must be in this courtroom on the date and time that I set for
7 sentencing, and if you are not, you will be guilty of a
8 separate crime and could be subject to punishment, including
9 prison or a fine, in addition to whatever punishment is imposed
10 in connection with your plea today. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Anything further, Ms. Lai?

13 MS. LAI: No, your Honor. Thank you.

14 THE COURT: Mr. Szeiback?

15 MR. ZWEIBACK: No, your Honor.

16 THE COURT: All right. In that case, I will stay on
17 the bench but this matter is adjourned. Thank you.

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